

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 451

52nd Legislature, 1st Session, 2015

Tracking Number: .199277.1

Short Title: Increase Number & Quality of Pre-K Programs

Sponsor(s): Representative W. Ken Martinez

Analyst: Ian Kleats

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Bill Summary:

HB 451 amends and adds multiple sections of the *Pre-Kindergarten Act* to provide the means to increase the number and quality of pre-kindergarten programs funded through the Children, Youth and Families Department (CYFD) and the Public Education Department (PED). Among its provisions, HB 451:

- provides that the purpose of the *Pre-Kindergarten Act* is “to provide the means for quality pre-kindergarten programming so that children who attend pre-kindergarten will be prepared to begin kindergarten”;
- amends the definition of pre-kindergarten to include three-year-old children (see “Technical Issues,” below);
- establishes definitions for several new terms, including:
 - “grant” to mean a pre-kindergarten quality improvement grant (see “Technical Issues,” below);
 - “professional development council”; and
 - “qualifying professional development organization”;
- requires CYFD and PED in their request for applications for pre-kindergarten services to:
 - include the selection criteria and the methodology for ranking and prioritizing proposals or applications; and
 - notify all proposers or applicants of funding decisions within five days from when the decision is made;
- amends the Public Pre-Kindergarten Fund and the CYFD Pre-Kindergarten Fund to:
 - consist of federal funds for public pre-kindergarten programming in addition to each fund’s current revenue sources; and
 - revert any unexpended or unencumbered balance remaining in either fund at the end of a fiscal year to the Public Pre-Kindergarten Quality Improvement Fund; and

- creates the Public Pre-Kindergarten Quality Improvement Fund, which:
 - consists of appropriations, federal funds for improving pre-kindergarten programming, transfers from the aforementioned pre-kindergarten funds, income from investment of the fund, gifts, grants, and donations;
 - does not revert at the end of the fiscal year; and
 - is administered by and appropriated to PED to provide pre-kindergarten quality improvement grants to school districts.

In addition, HB 451:

- provides for CYFD and PED to jointly consider and approve applications from school districts for pre-kindergarten quality improvement grants;
- provides for the duties of professional development councils, the establishment of which is a necessary component of the pre-kindergarten quality improvement grant application; and
- requires PED and CYFD to provide an annual report to the Governor and the Legislature on the progress of the departments' goals to increase the number and improve the quality of pre-kindergarten programs.

Fiscal Impact:

\$26.0 million is appropriated from the General Fund to the Public Pre-Kindergarten Quality Improvement Fund for expenditure in FY 16 and subsequent fiscal years to increase the number and quality of pre-kindergarten programs.

\$4.0 million is appropriated from the General Fund to CYFD for expenditure in FY 16 to fund additional teacher scholarships to allow early childhood employees to pursue postsecondary educational degrees in early childhood education. Unexpended or unencumbered balances revert to the General Fund.

Fiscal Issues:

HB 451 requires CYFD and PED to assign staff to:

- work on the development and implementation of the program;
- monitor the status of pre-kindergarten quality improvement grant awards;
- provide technical assistance for school districts and providers; and
- prepare annual reports for the Governor and the Legislature.

Unlike the Public Pre-Kindergarten Fund and the CYFD Pre-Kindergarten Fund, the Public Pre-Kindergarten Quality Improvement Fund does not provide that either department may use up to 10 percent of the money in the fund each year for administrative expenses. Both the CYFD and the PED bill analyses suggest this dedication of resources, without an additional appropriation, could result in budgetary hardship.

Technical Issues:

Page 3, lines 7-8 define “grant” to mean a pre-kindergarten quality improvement grant for the purposes of the *Pre-Kindergarten Act*. However, as can be seen on page 7, lines 9 and 25, and

page 8, line 19, the term “grants” is used with respect to allowed revenue for the statutorily created pre-kindergarten funds. The sponsor may wish to consider an amendment that removes the definition of “grant” or assigns that definition to a term other than the one commonly used in the statutory creation of funds.

Page 3, line 11 expands the definition of pre-kindergarten to include three-year-old children. This change does not appear to conflict with provisions in the *Pre-Kindergarten Act*. However, provisions relating to application and funding criteria for pre-kindergarten programs reference four-year-olds, when three- and four-year-olds would now be appropriate. For this reason, the sponsor may wish to consider amendments to Section 4 of the bill in the following areas to include three-year-olds:

- page 4, line 24; and
- page 6, lines 2, 3, 12, and 18.

Section 5 of the bill amends the Public Pre-Kindergarten Fund and the CYFD Pre-Kindergarten Fund to:

- consist of federal funds for public pre-kindergarten programming in addition to its current revenue sources; and
- revert any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year to the Public Pre-Kindergarten Quality Improvement Fund.

Allowing a statutorily created fund to consist of federal funds is not problematic per se. However, requiring the reversion and reappropriation of those funds may violate conditions and requirements for use of federal funds. Similarly, grants and bequests may also have conditions attached to their expenditure. Accordingly, the sponsor may wish to consider amending the reversion language to exclude federal funds, gifts, grants, and donations.

Substantive Issues:

Whereas pre-kindergarten programs are currently bifurcated between private programs funded through CYFD and public programs funded through PED, the pre-kindergarten quality improvement grants appear to envision a public-private partnership between school districts and private pre-kindergarten providers. This partnership could recognize the vested interest held by a school district to ensure that future students, who will transition into the district’s kindergarten programs but who receive pre-kindergarten services through a private provider, are prepared for that advancement.

Contrary to that view, however, the PED bill analysis suggests that:

- school districts may not have the capacity, infrastructure, or desire to contract with eligible community-based private providers to offer pre-kindergarten programs;
- when this arrangement was proposed in 2005, school district administrators were emphatic that they did not want the responsibility or the liability of managing sub-contracts to community providers for pre-kindergarten services; and
- giving public schools the responsibility for funding and ensuring the compliance of community pre-kindergarten programs is an unreasonable burden.

Both CYFD and PED raise concerns over the definition of “qualifying professional development organization.” While CYFD suggests that the definition does not provide sufficient clarity as to which organizations would qualify, PED suggests that the definition is too specific, potentially excluding state institutions of higher education, which have provided high-quality training and mentoring services over the past nine years.

It appears that the New Mexico Association for the Education of Young Children (NMAEYC), which currently holds the license for the state of New Mexico to implement The Child Care Wage\$ Project, would qualify under the definition of “qualifying professional development organization” provided by HB 451.

Background:

Early Childhood Care and Education Act

Enacted in 2011, the ECCEA has as its purpose “to establish a comprehensive early childhood care and education system through an aligned continuum of state and private programs, including home visitation, early intervention, child-care, early head start, head start, early childhood special education, family support, and pre-kindergarten, and to maintain or establish the infrastructure necessary to support quality in the system’s programs.” Provisions in the ECCEA:

- create the 15-member Early Learning Advisory Council (ELAC) that is attached to the CYFD;
- designate ELAC as the required Head Start program council¹;
- create the Early Childhood Care and Education Fund, a non-reverting fund administered by CYFD for carrying out the provisions of the act;
- allow ELAC to apply for grants and funds from any source, and to contract with any federal or state agency or private organization, to further the purposes of the act;
- require ELAC to make recommendations to CYFD and the Legislature on the most efficient and effective way to leverage state and federal early childhood program funds, including grant applications by CYFD;
- require ELAC to terminate on July 1, 2017 pursuant to the provisions of the *Sunset Act*; and
- require ELAC to make recommendations to CYFD and the Legislature on the coordination and alignment of an early childhood care and education system – recommendations that take a number of factors into consideration, among them:
 - the consolidation and coordination of funding streams;
 - a seamless transition from prenatal to early childhood programs to kindergarten;
 - the parent’s “decisive role in planning, operation and evaluation of programs that aid families in the care and education of children”;
 - the development and management of effective data collection systems;
 - the diversity and cultural heritage of families and communities;
 - professional development for providers; and
 - the establishment of an effective administrative framework.

¹ The establishment of a body such as the ELAC was mandated through the federal *Improving Head Start for School Readiness Act of 2007*.

2013 Implementation Update

During the 2013 interim, the Legislative Education Study Committee (LESC) heard an update on the implementation of the act.

Testimony began with an LESL staff review of the history and provisions of the act, including:

- a review of seven core principles, arising out of collaborative efforts of the New Mexico Business Roundtable (NMBR) and the New Mexico Early Childhood Development Partnership;
- the membership of the council, comprising three *ex officio* members; three members appointed from, and by, the NMBR Board of Directors; and nine other members, from various other stakeholder groups, appointed for staggered terms by the Governor; and
- requirements that ELAC make recommendations to the Legislature and CYFD on the best manner of leveraging available program funds, as well as general recommendations regarding the coordination and alignment of an early childhood care and education system in New Mexico, with particular attention to several prescribed components.

The Chair of ELAC (and Chief Executive Officer of the NMBR) testified about the council's efforts to implement the provisions of the act. Among the points raised were:

- the background and initial findings of the council;
- the council's mission statement: "To create a quality, sustainable, and seamless Early Care and Learning System, responsive to each child, from birth to age 5, and their family across New Mexico, by building partnerships, integrating systems, and making strategic, research-based and data-driven recommendations to policy makers and stakeholders";
- the council's vision statement: "To be the collective voice to move forward the Early Care and Learning System in New Mexico";
- the council's three long-term priorities:
 1. accessibility to high-quality early childhood programs, with particular attention to children with disabilities, children from diverse linguistic and cultural backgrounds, and children with challenging behaviors;
 2. improved school readiness (now and at third grade), through focus on children's progress across certain domains; and
 3. a high-quality early childhood workforce, with appropriate training, credentials, and range of competencies; and
- strategies and best practices to address the council's three priorities.

Additional testimony came from the respective chairs of committees that ELAC had formed:

- the Chair of the Access to Quality/Early Childhood Programs Committee testified that this committee is working to expand services, particularly high-quality childcare, into all identified early childhood investment zones (see "Race to the Top-Early Learning Challenge," below);
- the Chair of the School Readiness Committee reviewed the aspects of that committee's work toward helping students enter school at or above age level;
- the Chair of the Workforce Development Committee testified that early childhood educator pay levels are not commensurate with the work that these educators do; and that

help is needed not only to supplement their incomes, but also to help encourage highly qualified educators and caregivers to enter and remain in this field of work;

- the Chair of the Finance Committee described that committee’s focus on all potential funding sources to create multiple pathways for families in need of services, as well as expanding current operations and improving services; and
- the Chair of the Public Policy Committee noted ELAC’s interest in the multiple systems of early childhood development in New Mexico.

Testimony on this topic concluded as the Chair of ELAC noted that the council hopes to accomplish its goals before the provisions that created the council sunset in 2017.

Federal Race to the Top-Early Learning Challenge Grant

As described by the US Department of Education (USDE), the purpose of the Race to the Top-Early Learning Challenge Grant (RTT-ELC) is “to improve the quality of early learning and development programs and services and close the achievement gap for children with high needs.” USDE also notes that the overarching goal of the program is “to make sure that many more children, especially children with high needs, enter kindergarten ready to succeed.”

In 2012, the USDE selected New Mexico for a \$25.0 million RTT-ELC grant that would be paid out over four years. In July 2013, the USDE awarded New Mexico an additional \$12.5 million as part of the RTT-ELC program, making New Mexico’s total RTT-ELC award upwards of \$37.0 million.

Committee Referrals:

HEC/HAFC

Related Bills:

HB 25 *Medicaid Infant Home Visiting Services*
HB 56 *Child Care Teacher Retention*
SB 39 *Medicaid Infant Home Visiting Services*
SB 86 *Child Care Teacher Retention*
SB 224 *Early Learners Events*
SB 301 *Create Early Childhood Funds*
SB 304a *Early Childhood Books and Toys*
SB 343 *Guadalupe County Early Childhood Programs*
SB 344 *Northeastern NM Early Childhood Programs*
*SB 559 *Early Childhood Provider Benefit Incentives*
SB 561 *Corporate Tax for Preschool Programs*
SJM 10 *Reconvene J. Paul Taylor Childhood Task Force*
SJR 5 *School Fund for Early Childhood, CA*